UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC., Plaintiffs, v. PETER SHUMLIN, Governor of the State of Vermont; WILLIAM SORRELL, Attorney General of the State of Vermont; and JAMES VOLZ, JOHN BURKE, and DAVID COEN, members of the Vermont Public Service Board, Defendants	Docket No: 1:11-CV-99

MEMORANDUM OF LAW OF CONSERVATION LAW FOUNDTION AND VERMONT PUBLIC INTEREST RESEARCH GROUP AS JOINT AMICUS CURIAE SUPPORTING DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Conservation Law Foundation and Vermont Public Interest Research Group, intervenor and amicus curiae-applicants in the above-captioned proceeding, submit this memorandum of law in support the Defendants' opposition to the Plaintiffs' request for a preliminary injunction. No person other than the amicus curiae applicants or their members contributed money that was intended to fund preparing or submitting this memorandum.

Plaintiffs have failed to demonstrate the prerequisites needed for a preliminary injunction. Fed. R. Civ. Proc. 65(b); *International Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 70 (2d Cir. 1996). Plaintiffs are not likely to succeed on the merits and will not suffer irreparable harm

absent a preliminary injunction. The Plaintiffs own failures and repudiations preclude granting the equitable relief of a preliminary injunction.

I. LEGAL AND FACTUAL BACKGROUND

By this action, the Plaintiffs seek to have this Court usurp Vermont law and condone Plaintiffs' attempts to walk away from their legal obligations. In 2002, Entergy Nuclear Vermont Yankee (ENVY) purchased the Vermont Yankee Nuclear Power facility. That purchase followed a request by ENVY to the Vermont Public Service Board (PSB or Board) for a "certificate of public good" allowing ENVY to purchase and operate the facility. 30 V.S.A. § 248. Every generator of electricity in Vermont is required to obtain a certificate of public good. *Id.* The proposed sale was approved by the Vermont Public Service Board, over objections from parties, including Conservation Law Foundation, that the sale should not include a power contract with rates for electricity above market prices at the time. Ngau Ex. 20 at 17 (proposed power purchase agreement excessively priced). The sale approved by the Board includes an agreement by ENVY not to operate the plant after 2012, when its certificate of public good expires, without first obtaining regulatory approval from the Vermont Public Service Board. That agreement also includes the "express[]" and "irrevocable[]" agreement of the Plaintiffs that the Board has the authority to grant or deny approval of operation beyond March 21, 2012 and that they waive any claims that federal law preempts Board authority. *Id.*; Ngau Ex.3 at 6. There was a deal with ENVY when they bought the plant. By this action, ENVY asks the Court's permission to renege on that deal.

In 2006, the Vermont Legislature passed a law requiring approval of the Legislature before the Public Service Board could issue a new "certificate of public good." 30 V.S.A. § 248(e)(2). During 2008 and 2009, following a request by Plaintiffs for Board approval, the

Public Service Board undertook proceedings to consider whether it should grant a new certificate of public good to allow operation of the facility after March 21, 2012. Kee Ex. 8 (Petition); Cusimano Ex. 1 (hearing notices). During those proceedings, Conservation Law Foundation, Vermont Public Interest Research Group, and others showed that continued operation of the facility was not beneficial based on traditional state regulatory concerns regarding economics and power supply. Cusimano Ex. 2 (testimony). The inadequacy of the decommissioning funds and the uncertainty of waste disposal presented economic and power supply risks. *Id.* The Board has not issued a final determination on ENVY's request.

In 2010, it came to light that leaks at the Vermont Yankee facility were contaminating the groundwater and soils at the site. Cusimano Ex. 3 (Hardy affidavit 2-3-10). ENVY admitted that the leaks had been ongoing since at least November 2009. Cusimano Ex. 4 (discovery response). The sources of the leaks were underground pipes at the facility. Ngau Ex. 29 at 78. In 2010 it was also revealed that ENVY witnesses provided false testimony to the Public Service Board during the certificate of public good proceeding. ENVY witnesses had testified under oath that there were no underground pipes at the facility. Cusimano Ex. 5 at 2 (CLF letter). Following this news, a number of ENVY employees were suspended. Cusimano Ex. 6 (*Entergy suspends 4 more employees,* TIMES ARGUS, (Feb.25, 2010)). Based on independent state authority, the Board opened an investigation, which is still ongoing, into the leaks. The Board is considering whether the leaks violate ENVY's current certificate of public good and if so, whether the plant should be shut down or the certificate of public good revoked or amended or other ameliorative action taken to address the leaks. Cusimano Ex. 7 at 9 (PSB Order). Following the news of the false testimony, the public and the Vermont Legislature lost faith in the ability of ENVY to responsibly manage the facility. In February, 2010, the Vermont Senate declined to approve a bill that continued operation would promote the general good of the state.

Cusimano Ex. 8 at 205(Senate Journal 2-24-10). The actions of the state were based on matters of traditional state concern regarding power generation facilities – their economic and rate impacts, power supply and environmental and land use impacts. No actions were based on radiological health and safety.

Plaintiffs brought this suit in April 2011, more than one year after the Vermont Senate vote, more than three years after Plaintiffs' request of the Public Service Board for a new certificate of public good allowing continued operation, and more than five years after the Vermont statute requiring legislative approval. Apart from the lack of merit to any of Plaintiffs' claims, Plaintiffs delay and failure to follow their own commitments precludes the Court granting the preliminary injunction requested.

II. PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM

Plaintiffs cannot show any irreparable harm caused by application of state laws, because Vermont Yankee's 2011 Nuclear Regulatory Commission (NRC) license ("2011 license") is under judicial review. Plaintiffs' preliminary injunction motion turns on the claim that, as a matter of federal law, they have received final, valid authorization to operate the Vermont Yankee facility until 2032 through issuance, on March 21, 2011, of a license renewal by the NRC. *E.g.*, Pls' Mem. (Doc. 4-1) at 8-9 ("Here, the federal government, through its license renewal proceeding, has determined that the Vermont Yankee Station is permitted to operate until March 21, 2032); *id.* at 42-43. Plaintiffs' claims regarding irreparable harm hinge on an economic reliance interest. They claim any "current uncertainty" about continuous operation under the "2011 license" from the present until 2032 creates irreparable harm by eliminating

ENVY's economic reliance interest.[1] ENVY portrays the "2011 license" as creating certainty—under applicable federal laws—that the Vermont Yankee facility can operate lawfully without regulatory interruption between now and March 2032. But Plaintiffs' own failure to abide by the clear terms of federal law has given rise to appeals in the D.C. Circuit Court of Appeals seeking to have the "2011 license" vacated on grounds that the NRC issued it in violation of the Clean Water Act. Kolber Ex. 23, 24.

The pendency of timely appellate court review of ENVY's "2011 license" has two implications in this Court. First, it precludes this Court from ruling on ENVY's motion at this time because doing so would require this Court to make a threshold determination on the validity of ENVY's "2011 license." Such determinations lie within the exclusive jurisdiction of the Court of Appeals. Second, the pendency of litigation challenging the validity of the "2011 license" under federal law creates a more immediate "uncertainty" regarding Vermont Yankee's uninterrupted operation that breaks any purported causal chain between future Vermont state regulatory activities (whose outcomes are speculative) and ENVY's alleged reliance-based claims of irreparable harm. *Kamerling v. Massanari,* 295 F.3d 206, 214 (2d Cir. 2002)("irreparable harm must be shown to be actual and imminent, not remote or speculative").

A. Legal and Factual Background on Petitions for Review of the "2011 License"

Under the "Hobbs Act," the United States Court of Appeals "has exclusive jurisdiction to enjoin, set aside, suspend...or to determine the validity of" final licensing decisions made by the NRC. 28 U.S.C. § 2342(4); 42 U.S.C. § 2239(b)(1); *Florida Power & Light Co. v. Lorion,* 470

[1] *E.g. id.* at 37 (alleging that "current uncertainty as to whether the Vermont Yankee station will be allowed to continue operating after March 2012" makes it difficult to retain and recruit workers); *id.* at 35 (alleging that "risk of the Vermont Yankee Station being shut down" allegedly threatens ENVY's "long term" and "short term" business prospects); *id.* at 38 (alleging that "threat" of shutdown causes irreparable harm "even before the shutdown actually occurs."); *id.* at 42 (alleging that " 'temporary' shutdown" is tantamount to permanent shutdown); *id.* at 44-45 (alleging that "uncertainty created" by Vermont law requires ENVY to enter long-term power contracts at less favorable rates, or to lose out on them altogether)

U.S. 729, 737, (1985)("Congress intended to provide for initial court of appeals review of all final orders in licensing proceedings whether or not a hearing before the [Nuclear Regulatory] Commission occurred"). A "party aggrieved" may invoke this exclusive jurisdiction via a petition for review filed at the appropriate Court of Appeals within sixty days of the NRC's final order. 28 U.S.C. § 2344; *see Erie-Niagara Rail Steering Committee v. Surface Transp. Bd*, 167 F.3d 111, 112 (2d Cir. 1999)(recognizing that "party aggrieved" refers to parties who participated in the agency proceeding that resulted in the challenged license or order). With respect to the validity of ENVY's "2011 license," both the State of Vermont and the New England Coalition—participants in the challenged NRC licensing proceeding—have appealed to the D.C. Circuit Court of Appeals seeking a judicial determination that ENVY's "2011 license" is invalid for want of a federally-mandated Clean Water Act (CWA) § 401 water quality certification. Kolber Ex. 23 (*Vt. Dept. of Pub. Serv. V. U.S. NRC, petition for review filed* (D.C. Cir. May 19, 2011); Kolber Ex. 24 (*New England Coalition v. U.S. NRC, petition for review filed* (D.C. Cir. May 20, 2011)). Both Petitions seek to have the Court of Appeals vacate the "2011 license" pending compliance by ENVY and the NRC with their respective obligations under the federal Clean Water Act § 401 Water Quality Certification Requirements. Kolber Ex. 23 at 3; accord Kolber Ex. 24 at 3.

Pursuant to § 401(a)(1) of the CWA, 33 U.S.C. § 1341(a)(1), an applicant for a federal license for any activity that may result in a discharge into the navigable waters of the United States must apply for a certification from the state in which the discharge originates (or will originate) that the licensed activity will comply with state and federal water quality standards. *S.D. Warren Co. v. Maine Bd. of Environmental Protection*, 547 U.S. 370 (2006). The federal water quality certification authority granted to states by Congress in the CWA has been characterized as a state "veto" power over federal licenses and permits. *U.S. v. Marathon*

Development Corp., 867 F.2d 96, 99-100 (1st Cir. 1989) ("The legislative history of section 401 of the Act ("Certification") confirms that Congress intended to give the states veto power over the grant of federal permit authority for activities potentially affecting a state's water quality."). As explained by the NRC, the requirements of CWA § 401 apply in NRC license proceedings:

> In issuing individual license renewals, the Commission will comply, as has been its practice, with the provisions of Section 401 of the Federal Water Pollution Control Act (see 10 CFR 51.45(d) and 51.71(c)). In addition, pursuant to Section 511(c) of the Federal Water Pollution Control Act of 1972, the Commission cannot question or reexamine the effluent limitations or other requirements in permits issued by the relevant permitting authorities.

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed Reg. 28467, 28474 (June 5, 1996).

Both petitions are based on ENVY's failure to obtain a § 401 water quality certification from the State of Vermont and to provide such certification to the NRC prior to the NRC's issuance of the "2011 license." The CWA places the burden on licensees to request certification from the appropriate state. 33 U.S.C. § 1341(a)(1). States are only obligated to act under § 401 upon a "request" for a certification from a prospective licensee. *Id.* ("If the state . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) *after receipt of such request*, the certification requirements of this subsection shall be waived with respect to such Federal application.")(Emphasis added). Under Vermont law, 10 V.S.A. § 1004, "the agency of natural resources shall be the certifying agency of the state for purposes of Section 401 of the Clean Water Act and the secretary's determination on these certifications shall be final agency action by the secretary appealable to the environmental court." Though not required to do so by law, the Secretary of Vermont's Agency of Natural Resources notified ENVY officials that the Agency has yet to receive the requisite request from

ENVY for a § 401 certification needed to support the "2011 license." Cusimano Ex. 13 (Markowitz letter 5/25/11).

B. ENVY's Motion Requires the Court to Adjudicate Threshold Questions that are Beyond the Court's Jurisdiction

As explained above, ENVY predicates its claims of irreparable harm on the allegation that as a matter of federal law its "2011 license" creates certainty of uninterrupted operation at Vermont Yankee until March 2032. According to ENVY, this certainty would exist but-for operation of state laws that are allegedly unconstitutional. Pls' Mem. (Doc. 4-1) at 14-15. Thus, for the Court to adjudicate ENVY's claim that it will suffer irreparable harm, the Court must make a threshold determination that ENVY's "2011 license" is in fact valid and confers the certainty on which ENVY's irreparable harm allegations hinge. Yet the validity of ENVY's "2011 license" is subject to a timely challenge in the Court of Appeals. The Court of Appeals enjoys the exclusive jurisdiction to determine whether, *as a matter of federal law*, ENVY is in fact entitled to operate Vermont Yankee without interruption between now and March 2032 under a valid NRC license. 28 U.S.C. § 2342(4). This Court cannot presume the outcome of the petitions for review in ENVY's favor, as ENVY's motion requires this Court to do, without impermissibly intruding on the Circuit Court's exclusive jurisdiction. Accordingly, the Court cannot make a finding of irreparable harm while the NRC license is subject to appellate review.

C. ENVY Cannot Claim an Economic Reliance Interest in its "2011 License" Because the License's Validity is Subject to Judicial Review.

ENVY's allegations of irreparable harm are speculative. They all rest on a foundation that ENVY possesses valid authorization under federal law to operate the Vermont Yankee facility without regulatory interruption until March 2032. That foundation cannot support the weight ENVY places on it. ENVY's own failure to abide by the federal Clean Water Act has

given rise to petitions for review that as a matter of federal law create immediate uncertainty about ENVY's ability to operate the Vermont Yankee facility without interruption until 2032. If the Court of Appeals grants the petitions, the "2011 license" is invalid, along with ENVY's claimed authorization to operate the Vermont Yankee facility until 2032.[2] Moreover, the outcome of the Vermont § 401 certification process that would necessarily follow—a process that can take up to one year—cannot be guaranteed.

The Court, ENVY's employees, and ENVY's potential customers, can only speculate as to the outcome of the pending petitions for review. The same is true for the challenged state law proceedings whose outcomes are also uncertain at this point in time. ENVY claims that the uncertainty created by the challenged state law scheme gives rise to irreparable harm. Yet the same inchoate uncertainty exists in the federal law scheme that subjects NRC licenses to judicial review. Here, ENVY's own failure to follow clear mandates of federal law by timely commencing Vermont's federally-sanctioned § 401 process creates uncertainty that is more immediate and breaks any causal link between future Vermont regulatory action under state law and irreparable harms alleged by Plaintiffs.

III. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS

Plaintiffs are not likely to succeed on the merits because Vermont acted well within its authority and its actions are not preempted by Federal law. Federal law has long recognized the dual authority of both the states and the federal government regarding nuclear power facilities. The Atomic Energy Act sets forth the scope and purpose of federal regulation of nuclear power. 42 U.S.C. § 2011 et seq.; *Pacific Gas & Electric Co. v. State Energy Res. Conservation & Dev.*

[2] ENVY's "2011 license" expressly states that it supersedes ENVY's prior license. Compl. Ex. A at 7. If the Court of Appeals vacates the "2011 license," that court alone would have jurisdiction to decide any questions about the remaining validity of ENVY's prior NRC license to operate VY until 2012 under administrative continuance theories. 28 U.S.C. § 2342 (Court of Appeals enjoys exclusive jurisdiction to "determine the validity of" final NRC licenses).

Comm'n, 461 U.S. 190, 205, 212 (1983). In clear language, the statute specifically limits the scope of the Nuclear Regulatory Commission's jurisdiction stating:

> Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.

42 U.S.C. § 2018. This statute clearly preserves the authority of states "with respect to the *generation, sale, or transmission* of electric power produced through the use of nuclear facilities licensed by the Commission." *Id.* (emphasis added).

United States Supreme Court cases have confirmed the dual authority of both states and the federal government. *Pacific Gas & Electric*, 461 U.S. at 190, 205, 212 (1983); *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 257 (1984). The Court upheld a California law prohibiting construction of nuclear power plants prior to a state determination of adequate means for the disposal of nuclear waste. *Pacific Gas & Electric*, 461 U.S. at 198, 216. The Court determined that Congress "intended that the federal government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns." *Id.* at 205.

A. State Regulation of Existing Plants for Matters other than Radiological Health and Safety is Allowed.

State regulation is not limited to the construction phase of a nuclear power facility. Plaintiffs selectively rewrite the fundamental holding in *Pacific Gas & Electric* that a state has authority to regulate aspects of nuclear power generation when it has a non-safety purpose to do so. Plaintiffs erroneously claim that *Pacific Gas & Electric* creates a dichotomy between state

regulation regarding new plants and those already in operation. The Court nowhere draws this line.

The Court in *Pacific Gas & Electric* makes clear that states retain their traditional regulatory authority regardless of its regulatory timing: "[T]he legal reality remains that Congress has left sufficient authority in the states to allow the development of nuclear power to be slowed or even stopped for economic reasons." *Pacific Gas & Electric*, 461 U.S. at 223. A state's regulatory motivation is central to the court's preemption analysis, not the timing of state regulation. Pending state actions, such as the one here addressing operation after expiration of a limited term license, 30 V.S.A. § 248(e)(2), is wholly consistent with federal authority and is not preempted.

B. Vermont's Actions are Not Preempted as they Were not Motivated by Radiological Health and Safety Concerns

Vermont's actions regarding the Vermont Yankee facility have consistently and exclusively been based on matters of traditional state regulation. No decision has been based on radiological health and safety. The Vermont Public Service Board has addressed sale conditions "based upon this state's traditional police power, limited to issues associated with the manner in which Vermont meets it energy needs." Ngau Ex. 20 at 128 (PSB Order of 6/13/02). It has addressed the financial ability to manage spent nuclear fuel noting: "The financial assurances do not relate solely to safety, but also to whether the project might have land use or financial implications for the state." Ngau Ex. 4 at 65 (PSB Order of 4/26/06).

Since Entergy first expressed interest in the Vermont Yankee facility, the Vermont Legislature and the Vermont Public Service Board have taken action based on economic, reliability, land use concerns and the trustworthiness of the ENVY.

1. Economic basis to deny certificate of public good.

In considering whether to grant a new certificate of public good, the Board has before it significant information on the poor economics of continued operation. Cusimano Ex. 2 (Chernick 2/11/09 testimony). The Board has sworn testimony that the funds available for decommissioning are not adequate. *Id.* at 6-21. The lack of adequate decommissioning funds leaves the state of Vermont "burdened with costs," and bearing "the nuclear equivalent of a junk car in its back yard." *Id.* at 6. Furthermore, the revenue sharing agreement, which ENVY relies on for claiming benefit from continued operation, has widely ranging possible values and could offer no benefit at all to ratepayers. *Id.* at 23-25. These economic concerns are directly analogous to the ones that led to the California statute that was upheld in *Pacific Gas & Electric.*

2. Consideration of power supply.

In recent years, Vermont has been considering its power supply and how Vermont Yankee may fit into that mix. Plaintiffs note some power supply studies that show a range of possible options. Kee Ex. 7, 9. Specifically one Vermont Department of Public Service study evaluated the alternatives to Vermont Yankee. Kee Ex. 7 at 401-28. A report by the Vermont Public Interest Research and Education Fund in the summer of 2009 sets forth more explicitly how Vermont can repower "with local renewable energy resources" instead of committing "to an additional 20 years of Vermont Yankee." Cusimano Ex. 9 at 2 (*Repowering Vermont,* VPIREF, Summer 2009). Specifically focused on alternatives to Vermont Yankee, the report sets forth the resources needed to "meet all of Vermont's traditional electricity needs" without Vermont Yankee as a means to make "sure our future is based on a clean energy economy." *Id.* at 4-5. These studies amply show how Vermont has considered and been motivated by the non-preempted area of power supply for the region, and not radiological health and safety.

3. Violations from leaks.

As a result of the leaks that became known in 2010, the soil, groundwater and surface water at the facility site are contaminated. The contamination is not limited to the areas identified by ENVY and the extent of contamination and needed remediation has not been identified. Cusimano Ex. 10 at 10, 20 (French 6/30/10 corrected testimony). Testimony presented to the Board shows that the leaks are causing harmful environmental, economic, reliability and land use impacts. The testimony described in detail ENVY's poor performance, including poor monitoring and failure to follow its own recommended action plan, (*Id.* at 5-7), failure to put in place monitoring that would lead to the detection of leaks (*Id.* at 7-8), failure to be aware of potential leaks where they were found (*Id.* at 8), failure to adequately evaluate the remediation necessary (*Id.* at 9), failure to provide for responsible remediation of the property (*Id.* at 9-11), failure to responsibly evaluate and address contamination at soil depths (*Id.* at 12-14) and failure to provide remediation that will capture most of the contamination (*Id.* at 17-19). Vermont Agency of Natural Resources witnesses also testified that none of the state discharge permits authorize any of the releases from the leaks. Cusimano Ex. 11 (ANR Testimony, Thompson at 2-3; Akielaszek at 2-3; Mason at 3-4). The leaks and the inadequate response to them raise environmental, economic, reliability and land use issues wholly within the regulatory authority of the state.

4. Untrustworthiness of ENVY.

The false testimony and other bad acts by ENVY are grounds for state action, including declining to issue a new certificate of public good. In June of 2010, the Board expressed grave concern over the false information ENVY provided and awarded intervenors attorneys fees and costs for ENVY's breach. Cusimano Ex. 12 at 10 (PSB Order 6/4/10). Notably, the Board did not dismiss ENVY's certificate of public good request. ENVY argued, and the Board accepted,

that dismissal would be a final order that is precluded absent Legislative action required by 30 V.S.A. § 248(e)(2). *Id.* at 13. ENVY's untrustworthiness is demonstrated by its successful reliance on 30 V.S.A. § 248(e)(2) to avoid dismissal of its certificate of public good request in 2010, and now seeking to avoid application of that same statute.

There is no question that ENVY provided false information to support its certificate of public good request. *Id.* at 2. Throughout Vermont statutes there are standards that allow for penalties, denying or revoking a license based a misrepresentation of material information. See 30 V.S.A. § 30(e)(utilities); 16 V.S.A. § 1698(1)(f)(teachers license); 26 V.S.A. § 2296(a)(1)(real estate brokers); 10 V.S.A. § 6027(g)(4)(land use permits); 8 V.S.A. § 4804(a)(1)(insurance vendors); 23 V.S.A. § 3008(a)(2)(fuel dealers); 8 V.S.A. § 3837(a)(1)(life settlement providers); 26 V.S.A.§ 3323(a)(1)(real estate appraiser); 6 V.S.A. § 565(a)(1)(hemp growers); 26 V.S.A. § 2402(b)(veterinarians); 26 V.S.A. § 4452(b)(speech pathologists); 11 V.S.A. § 3137(a)(2)(foreign limited liability company); 26 V.S.A. § 1658(a)(11)(anesthesiologist assistant); 26 V.S.A. § 2831(c)(3)(radiologic technologist); 26 V.S.A. § 1704(optometrist); 2 V.S.A. § 2908(3)(polygraph examiner); 26 V.S.A. § 375(c)(6)(podiatrist); 24 V.S.A. § 4455(telecommunications facility); 26 V.S.A. § 1736(b)(5)(physician's assistant); 26 V.S.A. § 2051(3)(pharmacist); 8 V.S.A. § 2758(a)(7)(banks); 26 V.S.A. § 1842(b)(2)(osteopaths); 26 V.S.A. § 2181(c)(2)(plumbers); 26 V.S.A. § 2598(b)(3)(land surveyors); 26 V.S.A. § 210(13)(architects). If land surveyors, architects, plumbers and physician's assistants can lose or be denied a license for making a material misrepresentation, less cannot be expected or required of nuclear facility operators. The false testimony that ENVY officials provided under oath calls into question the ability of the plant operator to meet its legal obligations. It is wholly within traditional state authority to deny a new certificate of public good for a nuclear facility based on the misrepresentations and untrustworthiness of the owner and operator.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs request for a preliminary injunction.

Respectfully submitted,

Date: May 31, 2011

Sandra Levine
slevine@clf.org

Christopher Kilian
ckilian@clf.org

Anthony Iarrapino
aiarrapino@clf.org

Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, Vermont 05602
(802) 223-5992
(802) 223-0060 (fax)

Counsel for Conservation
Law Foundation, Vermont
Public Interest Research Group